

Energy



About Us

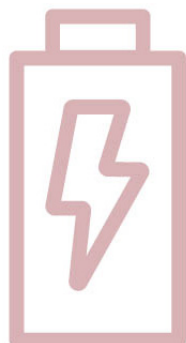
Our market-leading team advises a wide range of clients in the energy sector, including utilities, investors, developers, financiers and regulators. With expertise in key areas of law such as energy regulation and markets, construction, planning and environmental, real estate, banking and corporate, we are well positioned to provide clients with the most comprehensive suite of legal advice available to the Irish energy sector.

We have acted on the project finance, development or acquisition of electricity generation – both thermal and renewable – having cumulative generation capacity in excess of 1.5GW. This includes advising on the largest Irish energy transaction of recent years, Brookfield Renewable Energy Partners, on its acquisition of the renewable energy assets of Bord Gáis Éireann.

We have also advised on transactions involving electricity and natural gas network assets, and petroleum exploration and extraction. We advised the Commission for Energy Regulation and the Northern Ireland Authority for Utility Regulation on the development of the all-island Single Electricity Market (SEM).

By way of example, we have advised:

- Investors / Utilities: Brookfield Renewable Energy Partners, SSE Generation Ireland, Gas Networks Ireland
- Lenders: Allied Irish Banks, Bank of Ireland, Barclays Bank, Bremer Landesbank, DNB Bank, KBC Bank Ireland, KfW IPEX, Nord/LB and Ulster Bank
- Wind farm developers: SSE Renewables, Eco Wind Power, ABO Wind AG and other private consortia developers



Construction

We advise on all aspects of the suite of construction contracts required for the development of energy projects of all fuel types, both thermal and renewable. This includes the drafting and negotiation of:

- Equipment supply and operation and maintenance agreements
- “Balance of plant” construction agreements and contestable arrangements for the construction of grid assets
- Design team appointments and collateral warranties, as well as the preparation of due diligence reports on project construction arrangements

We have advised on projects involving the technology supplied by most of the major international equipment suppliers, including ABB, Alstom, Enercon, Gamesa, General Electric, Hitachi, Mitsubishi, Nordex, Siemens and Vestas.

Regulation & Markets

The Irish energy sector is heavily regulated at both Irish and European levels. We advise on the range of permits that an Irish energy project requires, such as:

- Electricity generation and supply licences, authorisations to construct”
- Licences and leases required for petroleum exploration in Irish territorial waters

We advise on the heavily-regulated connection rights that are offered by network operators as well as the amendment and combination of these rights in the event that project configurations change. We also advise network operators on operational issues relating to their networks.

The scope of our regulatory practice extends even further. We are currently advising market participants in relation to:

- The emerging European target model for wholesale energy markets
- The EU Connecting Europe Facility that supports major infrastructural projects

Corporate

Our team advises on all aspects of the corporate structures that are typically used to deliver energy projects, and the commercial, regulatory and corporate governance issues that arise from the use of these structures. These include:

- Appropriate joint venture arrangements
- Availability of tax incentives and tax-driven structural considerations
- Mergers and acquisitions transactions
- Restructurings involving corporate entities

We have extensive experience advising on joint venture structures for the development of renewable energy portfolios and in the last 24 months our proposed team has:

- Advised an early stage developer on the successful introduction of a new investment partner for the co-development of over 250MW of solar development assets
- Advised a second stage investor in respect of a joint venture for the acquisition and co-development of solar development assets in Ireland with a combined potential maximum export capacity of over 220 MW
- Advised a private developer on joint venture co-development arrangements for the development and financing of over 90MW of on-shore wind assets
- Acted for the Irish Strategic Investment Fund in relation to an investment in a solar development joint venture to develop and finance over 150 MW of solar assets in Ireland

Dispute Avoidance & Resolution

We have a strong tradition in all types of litigation and this is reflected in our healthy and varied litigation practice, which covers a wide spectrum of specialist disciplines. It is widely regarded as one of Ireland's top litigation practices. This experience means we are ideally placed to advise on dispute avoidance and early resolution. Where this is not possible, we frequently deploy technically skilled teams to protect the interests of our clients.

Due to their complexity and the specialised circumstances of the regulatory regime, energy project arrangements typically provide for disputes to be resolved in forums other than the courts. Accordingly, we have acted for a broad range of interests in mediation, conciliation, adjudication, arbitration and court proceedings, both in advancing and defending claims.

Banking

Our team advises on all financing and banking aspects of Irish energy projects, on behalf of both financial institutions and developers. We are an associate member of the Loan Market Association and can produce both bilateral, club and syndicate credit documentation for lenders. The inherent complexity of energy projects can often lead to a mix of funding and we have experience advising on all inter-creditor and priority issues which can arise.

We negotiate, draft and review:

- Facility agreements, inter-creditor agreements and security documentation
- Key project documents that affect project bankability, and where we act for a lender, we work to ensure that our client's interests are protected in relation to the project documents

Route to Market

In order for an energy project to be viable, its output will need to be monetised. Of particular importance to new Irish renewable energy projects in this regard is the REFIT PSO scheme, which provides financial support based on the existence of a qualifying power purchase agreement.

Where a project is to be supported by REFIT, we typically advise on the interaction between the REFIT scheme, the power purchase arrangements that are proposed, and the SEM.

We draft, negotiate and advise on all key legal instruments and structures that govern project remuneration, such as:

- Power purchase agreements
- SEM intermediary agreements
- "Supplier lite" project structures (facilitating the interaction of REFIT and the SEM)

Planning & Environmental

The development of an Irish energy project typically requires engagement with the planning process, including, where available, the streamlined permitting process set out in the Strategic Infrastructure regime. We advise project developers and lenders in relation to the planning process, including assistance and strategy on:

- Applications for planning permission and extension
- Planning appeals
- Requests for information
- Compliance with planning conditions

We also carry out reviews of planning permissions and ancillary permits that have been obtained.

Thermal energy projects will also typically require various environmental licences, including:

- Industrial emissions directive licences
- Greenhouse gas permits
- Instruments securing the performance of the licence obligations, including decommissioning

Again, we are familiar with these licensing regimes and we assist developers on their interaction with energy projects.

Real Estate

Project developers and lenders consult us on a wide variety of real estate issues. Our team has acted for a mix of landowners and project developers in negotiating and agreeing interests in real property, both freehold transfers and leases, for energy projects.

We review and investigate property titles for project sites, including proposed grid connection routes, and carry out comprehensive analysis of access and wayleaves, including ongoing access for maintenance and decommissioning purposes. We also take care to ensure that any lender step-in rights will extend to the real estate interests that relate to the project.

Our Team



William Carmody
Partner, Co-head of Energy
+353 1 614 5097
wcarmody@mhc.ie



Rory Kirrane
Partner, Co-head of Energy
+353 1 614 5273
rkirrane@mhc.ie



Liam Brazil
Partner, Corporate
+353 1 614 5005
lbrazil@mhc.ie



Vanessa Byrne
Partner, Co-head of Real Estate
+353 1 614 5296
vbyrne@mhc.ie



Eoin Cassidy
Partner, Energy
+ 353 1 614 5243
ecassidy@mhc.ie



Niall Collins
Partner, Head of EU & Antitrust
+353 1 614 2411
ncollins@mhc.ie



Edel Hartog
Partner, Commercial
+353 1 614 5868
ehartog@mhc.ie



Justin McKenna
Partner, Corporate
+ 353 1 614 5253
jmckenna@mhc.ie



Peter McLay
Partner, Energy
+353 1 614 2120
pmclay@mhc.ie



Frank O'Flynn
Partner, Corporate
+353 1 614 2160
foflynn@mhc.ie